mon. *Hiles* v. *Fisher,* 144 N. Y. 386 though in some states, as in Michigan, such rents and profits cannot be subjected to claims of creditors of either. *Dickey* v. *Converse,* 117 Mich. 449.

HUSBAND AND WIFE—NECESSARIES FURNISHED TO BIGAMOUS WIFE.—W, though she had a husband living, had gone through a marriage ceremony with H, and had lived with him as his wife. H discovered the deception that had been practiced on him and was about to institute a prosecution for bigamy against W, when she fled, but before absconding she bought necessaries on H's credit. *Held,* that H is liable even though his purported marriage with W was void. *Frank* v. *Carter* (N. Y. 1916), 113 N. E. 549.

It is usually said that the husband's liability for necessaries furnished the wife arises out of the duty imposed by the marriage relation and it must be shown that the goods were necessaries and that he has failed to furnish them. *Bergh* v. *Warner,* 47 Minn. 250. The husband is always liable where a real agency can be implied, as from the fact that he has previously paid for goods furnished his wife on his credit. *Benjamin* v. *Benjamin,* 15 Conn. 347. A third case of liability arises when goods have been furnished a woman to whom the defendant has never been married but whom he has held out as his wife. The liability there cannot be based upon the duty arising from the marriage relation and it exists even though there is no real agency. Most courts base it upon an estoppel. *Watson* v. *Threlkeld,* 2 Esp. 637; *Hoyle* v. *Warfield,* 28 Ill. App. 628. In *Ryan* v. *Sams,* 12 Ad. & El. 460, and *Blades* v. *Free,* 9 B. & C. 172, an agency could be implied from the facts and the court did not rest the decision entirely on the estoppel. *Watson* v. *Threlkeld, supra* carries the doctrine of estoppel the farthest for it holds the defendant liable even though the plaintiff knew he (the defendant) was not married to the woman to whom the goods were furnished. *Munro* v. *De Chamant,* 4 Camp. 215 holds that the liability of the man for necessaries ceases at the time of the separation from the woman he has held out as his wife. Where a marriage ceremony has in fact taken place (though void because of bigamy of the wife as in *Frank* v. *Carter supra*) the doctrine of estoppel is applied also. The husband is estopped to assert that the woman is not his wife and he will be held liable for goods sold her even after separation, provided the plaintiff did not know of the separation. *Hawley* v. *Ham,* Taylor (Ont.) 385; *Johnson* v. *Allen,* 8 How. Prac. (N. Y.) 506. A fortiori the husband will be liable when he attempts to set up his own bigamy as a defense, *Robinson* v. *Nahon,* 1 Camp. 245.

LANDLORD AND TENANT—COVENANT FOR QUIET ENJOYMENT.—Plaintiff sued his lessor on a covenant for quiet enjoyment. It was proved that other tenants of defendant caused a nuisance which injured plaintiff's business. *Held,* that defendant is not liable in the absence of proof that he authorized or participated in the nuisance. *Malzy* v. *Eichholz* [1916], 2 K. B. 308.

The covenant stipulated that the lessee's quiet enjoyment should not be disturbed by the lessor or anyone claiming through him. It is the law in England and the United States that there is no liability on such a covenant

unless the alleged breach results from the lessor's own act, or some act authorized by him, *Harrison, Ainslie & Co.* v. *Muncaster* [1891], 2 Q. B. 680; *Sanderson* v. *Berwick-on-Tweed Corporation* (1884), 13 Q. B. D. 547; *Jeffreys* v. *Evans,* 19 C. B. (N. S.) 246; *Jaeger* v. *Mansions Consolidated* (1903), 87 L. T. 690; *Gilhooley* v. *Washington,* 4 N. Y. 217; *De Witt* v. *Pierson,* 112 Mass. 8. In this country eviction is necessary to support an action on a covenant for quiet enjoyment, whether in a lease or a deed, *Borcel* v. *Lawton,* 90 N. Y. 293, 43 Am. Dec. 170; *Avery* v. *Dougherty,* 102 Ind. 443; *Callahan* v. *Goldman,* 216 Mass. 238, 103 N. E. 689; *Roth* v. *Adams,* 185 Mass. 341, 70 N. E. 445; *American Ice Co.* v. *Pocano Spring Co.,* 183 Fed. 193. In some jurisdictions, if the act of the landlord is such as to substantially deprive the lessee of the consideration which he should receive for his payment of rent he may recover under the covenant, on the theory of a constructive eviction, *Pendleton* v. *Dyett,* 8 Cowen (N. Y.), 727; *Sprague* v. *Baker,* 17 Mass. 586; *Brown* v. *Holyoke Water Power Co.,* 152 Mass. 463, 25 N. E. 966; but there can be no constructive eviction unless the lessee actually leaves the premises, *Barrett* v. *Boddie,* 158 Ill. 479; *Dewitt* v. *Pierson,* supra; *Hoberg* v. *May,* 153 Pa. St. 216; and the abandonment must take place within a reasonable time, *Crommelin* v. *Thiers,* 31 Ala. 412, 70 Am. Dec. 499. The older English cases indicate that the early rule in that jurisdiction required proof of eviction as a basis of recovery on the covenant, *Dennett* v. *Atherton,* L. R. 7 Q. B. 316; *Upton* v. *Townsend,* 17 C. B. 30, 84 E. C. L. Rep. 30. Later cases, however, give the covenant a wider scope, holding that it may be broken although neither the title nor possession are affected, the true question being, according to these authorities, whether or not there has been a substantial interference with the ordinary and lawful enjoyment of the tenant, and this to be determined by a jury, *Sanderson* v. *Berwick-on-Tweed Corp.,* supra, *Budd-Scott* v. *Caniell* [1902], 2 K. B. 351; *Manchester Ry.* v. *Anderson* [1898], 2 Ch. 394; *Williams* v. *Gabriel* [1906], 1 K. B. 155. The more liberal construction which these courts are now making of the covenant when contained in a lease seems highly proper.

MUNICIPAL CORPORATIONS — LIABILITY FOR NEGLIGENCE — PUBLIC PARKS. — Plaintiff, a four-year-old child, was bitten by a coyote negligently kept in a wire cage in a public park maintained by the city. *Held,* maintenance of parks is a governmental function, in the performance of which the city is not liable for the negligence of its agents or servants. *Hibbard* v. *City of Wichita* (Kans. 1916), 159 Pac. 399.

It is a settled principle that, with one or two well recognized exceptions, a municipality is not liable for the negligence of its servants or agents in the performance of governmental functions, as distinguished from municipal functions. There is less uniformity as to what functions are properly classed as governmental. Most courts, when the question has arisen, have held, as in the principal case, that the maintenance of public parks is a governmental function, not within any exception to the rule of exemption from liability, and therefore that a city is not liable for injuries caused by negligence in the operation and management of parks, unless such liability is expressly